

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
LUFT & SONS, INC	NO. 2008-AQ- 44
Buena Vista County, IA	

TO: Luft & Sons, Inc.
Lowell F. Luft, Registered Agent
47911- 240th Street
Rolfe, Iowa 50581

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Luft & Sons, Inc., for the purpose of resolving air quality violations which have occurred at the property located in the Southwest ¼ of Lincoln Township, Section 16, Buena Vista County, Iowa. In the interest of avoiding litigation, the parties have agreed to the following provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Nate Young, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand, Gateway North Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

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and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On June 16, 2007, the following persons observed illegal open burning conducted by Luft & Sons, Inc., in the Southwest ¼ of Lincoln Township, Section 16, Buena Vista County (the site): Brent Koppie, DNR Conservation Officer; Marty Demuth, Buena Vista County Sheriff's Office; and Kim Johnson, Buena Vista County Environmental Services. The materials burned at the site included tires. Luft & Sons, Inc. was removing a farm site when the illegal open burning was conducted. The site is known locally as 50740-150th Street in Buena Vista County.

2. On September 11, 2007, a Notice of Violation letter was sent to Luft & Sons, Inc. from DNR Field Office 3 citing the violation and stating the prohibition against illegal open burning. The letter also informed Luft & Sons, Inc. that the matter was being referred for further enforcement action.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of tires is specifically prohibited. The above facts demonstrate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Luft & Sons, Inc. agrees to do the following:

1. Pay a penalty of \$1,500.00 within 30 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,500.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

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Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,500.00. The administrative penalty is determined as follows:

Economic Benefit – Luft & Sons, Inc. has achieved an economic benefit from open burning and improper waste disposal. It has saved time, labor, and landfill costs by not timely and properly removing, transporting, and disposing of the solid wastes from the site. Based on these considerations, \$1,000.00 is assessed for this factor.

Gravity -- Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and environment. The open burning of trade waste is specifically prohibited. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Based on the above consideration, \$250.00 is assessed for this factor.

Culpability – Luft & Sons, Inc. has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, \$250.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Luft & Sons, Inc. For that reason Luft & Sons, Inc. waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
October, 2008.



For LUFT & SONS, INC.

Dated this 26 day of
Sept, 2008.

Bucna Vista Air Quality file; Anne Preziosi; Field Office 3; VII.C.1. .

RECEIVED
SEP 29 2008